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TEUKU NAWARDIN SYAMSUAR

v.

PP

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FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
MOHD GHAZALI YUSOFF FCJ
HELILIAH MOHD YUSOF FCJ
[CRIMINAL APPEAL NO: 05-149-2009 (B)]

C

9 FEBRUARY 2011

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Drug trafficking - Appeal against conviction and sentence - Whether there were gaps arising out of contradictions in prosecution's evidence - Whether*

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defence raised doubts on prosecution's case

The appellant had been convicted and sentenced to death on a charge of trafficking in cannabis. It was the prosecution's case in evidence that the accused was found with the incriminating drug package in his pants. The High Court and the Court of Appeal had undertaken an appraisal of the material particulars leading to the finding that the prosecution had established a case beyond reasonable doubt. The appeal herein was grounded on alleged gaps arising out of contradictions in the evidence led by the prosecution. The appellant alleged that the packet containing the drug could have been tampered with which stemmed from the slightly differing description of the layers of the packaging and the size of the package was such that the package could not have been tucked underneath the trousers worn by the appellant in the region of the belly/groin. The evidence being questioned pertained to the description of the package in which the drug was wrapped and the trousers worn by the appellant. The issue that arose was whether the defence had raised doubts on the prosecution's case.

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Held (dismissing the appeal; affirming the sentence)

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Per Heliliah Mohd Yusof FCJ delivering the judgment of the court:

(1) In relation to the package in which the drug was found it was evident from the relevant portion of the notes of proceedings that SP5 on 9 January 2006 at 10pm had received '1 ketulan mampat dadah disyaki ganja yang dibaluti dengan kertas timah dan plastik lutsinar yang telah ditanda "A".' SP2, the chemist,

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had confirmed receiving the sealed 'sampul A' from SP5. Herein, the evidence of SP2, SP3 and SP5 combined disclosed that the substance that was detected in the package was the very substance analysed by the chemist. The alleged difference in the layers of the packaging did not amount to material contradictions for the purpose of identifying the drug. (paras 6-8 & 11)

(2) The defence overall was one of denial. He denied that the package was taken by the police from under his trousers and asserted instead that the drugs were found in the compound of a factory. He refuted wearing jeans and insisted that he was wearing instead a pair of cotton pants coloured dark blue. His version was that the pants were exchanged by force with some other 'seluar' worn by an Indian detainee in a cell at the Balai Polis. He did not deny that he was physically examined but refuted the fact that the package was found on his person. However, the appellant's defence in effect amounted to non-cohesive contradictions. Herein, there was no break in the chain of evidence. SP4 and other police personnel were present when the drugs were found. (para 20)

(3) The trial judge had considered all the elements that would amount to trafficking as charged. Apart from possession as deemed under s. 37(d), s. 2 of the DDA 1952 had been rightfully invoked where in the context of the case the prosecution could rely on the act of 'keeping' and 'carrying' to constitute trafficking. The appellant had arrived at the place of arrest from somewhere. The summing up referred to above was found to be legally correct. On the balance of probabilities no reasonable doubt (the operative factor) existed to justifying the setting aside of the conviction. (paras 21 & 23)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah disabit dan dihukum mati atas pertuduhan pengedaran cannabis. Ia adalah kes pendakwaan dalam keterangan bahawa tertuduh didapati dengan bungkusan dadah tersebut di dalam seluarnya. Mahkamah Tinggi dan Mahkamah Rayuan telah membuat penilaian butiran material membawa kepada penemuan yang pihak pendakwaan telah membuktikan kes melampaui keraguan munasabah. Rayuan ini berdasarkan jurang-jurang yang didakwa muncul dalam keterangan yang diberi oleh pihak pendakwaan. Perayu mendakwa bahawa bungkusan yang

A mengandungi dadah tersebut boleh jadi diusik berpunca dari huraian yang berbeza mengenai lapisan bungkusan dan saiz bungkusan membuatkan ia mustahil untuk dimasukkan ke dalam seluar yang dipakai oleh perayu di rantau perut/groin. Keterangan yang dipersoalkan adalah mengenai huraian bungkusan di mana B dadah tersebut dibalut dan seluar yang dipakai oleh perayu. Isu yang timbul adalah sama ada pihak pembelaan telah membangkitkan keraguan ke atas kes pihak pendakwaan.

Diputuskan (menolak rayuan; mengesahkan hukuman)
C **Oleh Heliliah Mohd Yusof HMP menyampaikan penghakiman mahkamah:**

(1) Berhubungan bungkusan di mana dadah tersebut dijumpai ia adalah jelas bahawa dari bahagian relevan nota prosiding yang SP5 pada 9 Januari 2006 pukul 10 malam telah menerima '1 D ketulan mampat dadah disyaki ganja yang dibaluti dengan kertas timah dan plastik lutsinar yang telah ditanda "A".' SP2, ahli kimia, telah mengesahkan bahawa sampel termeterai A telah diterimanya dari SP5. Di sini, keterangan SP2, SP3 dan SP5 digabungkan menunjukkan bahawa bahan yang telah E dikesan di dalam bungkusan adalah bahan yang telah dianalisa oleh ahli kimia. Perbezaan yang didakwa terdapat dalam lapisan-lapisan pembungkusan tidak berjumlah kepada percanggahan butir-butir bagi mengenalpasti dadah tersebut.

F **(2)** Secara keseluruhannya pembelaan hanya merupakan satu penafian. Perayu telah menafikan bahawa bungkusan telah diambil oleh pihak polis dari seluarnya dan menegaskan dadah-dadah tersebut dijumpai di dalam kawasan sebuah kilang. Perayu menyangkal yang beliau memakai seluar jenis jeans dan G sebaliknya telah memakai seluar jenis kapas berwarna biru tua. Versinya adalah seluarnya telah tertukar secara paksa dengan seluar lain yang dipakai oleh seorang lagi tahanan berbangsa India di penjara di stesyen polis. Perayu tidak menafikan bahawa beliau telah diperiksa secara fizikal tetapi menyangkal H fakta bahawa bungkusan tersebut didapati atas dirinya. Bagaimanapun, pembelaan perayu pada dasarnya merupakan percanggahan yang tidak bersepadu. Di sini, tidak terdapat pencelahan di dalam rantaian keterangan. SP4 dan ahli-ahli polis yang lain hadir pada masa dadah tersebut dijumpai.

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(3) Hakim bicara telah mempertimbangkan segala unsur-unsur yang membawa kepada pengedaran seperti di dalam pertuduhan. Selain dari milikan seperti yang terdapat di bawah s. 37(d), s. 2 ADB 1952 telah digunakan dengan betul di mana dalam konteks kes pihak pendakwaan boleh merujuk kepada tindakan 'menyimpan' dan 'membawa' untuk membuktikan pengedaran. Perayu telah sampai ke tempat beliau ditahan dari mana-mana pun. Kesimpulan yang dirujuk di atas didapati betul dari segi undang-undang. Pada satu imbangan kebarangkalian tiada keraguan yang munasabah (faktor berkuatkuasa) wujud untuk menjustifikasikan pengenepian sabitan.

Case(s) referred to:
Gunalan Ramachandran & Ors v. PP [2004] 4 CLJ 551 CA ***(refd)***
Mohammed Salleh v. PP [1969] 1 LNS 80 FC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(d)

For the appellant - Jagdish Kaur (Hisham Teh Poh Teik with her); M/s AS Jag & Co
For the prosecution - Nurulhuda Nur'aini Mohd Nor DPP; AG's Chamber

[Editor's note: This case before the Court of Appeal was reported as Teuku Nawardin Shamsuar v. PP, [2010] 4 CLJ 951.]

Reported by Suhainah Wahiduddin

JUDGMENT

Heliliah Mohd Yusof FCJ:

[1] The appellant has been convicted and sentenced to death on a charge of trafficking. The charge reads:

> Bahawa kamu pada 09 Oktober 2006, jam lebih kurang 8.30 malam bertempat di hadapan gudang A S Logistics Sdn. Bhd, Lot 1614 & 1615, Jalan Teluk Kapas, Rantau Panjang, Klang, di dalam Daerah Klang, di dalam Negeri Selangor Darul Ehsan, telah didapati memperedarkan dadah berbahaya iaitu 510 gram ganja dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39(B)(2) Akta yang sama.

[2] The conviction and sentence have been sustained by the Court of Appeal (COA). At the outset it is noted that the High Court and the COA have undertaken an appraisal of the material particulars leading to the finding that the prosecution has

established a case beyond reasonable doubt. The facts relied upon by the prosecution are direct from the evidence of witnesses. Since the appeal has been grounded on alleged gaps arising out of contradictions in the evidence led by the witnesses for the prosecution, it is found necessary to lay out the facts as summarised by the trial judge. The facts relied upon are:

> On the 9th October 2006 at about 8.30 p.m. Chief Inspector Mohd. Husni bin Manaf (SP3) together with a six man team of policemen acting on information received conducted a drug trafficking operation at Jalan Teluk Kapar, Rantau Panjang, Klang. They arrived at the location near a factory named AS Logistic (hereinafter called the factory) at about 8.15p.m. and kept surveillance. The place was brightly lit by the street lights and the factory lights. At about 8.30p.m. he saw a Yamaha 125Z motorcycle No. BHG 7567 ridden by the accused, stopping in front of the factory. He and his six men team rushed to apprehend the accused. The accused attempted to run but was successfully caught by SP3 and D/L/Kpl. Yatim (SP4) and D/L/Kpl. Rizal. SP3 conducted a body search on the accused in the presence of his six men team and found a package wrapped in tin foil plastic and selotape tucked in front of his waist underneath his trousers and covered by his jacket. SP3 also seized a UNHCR card bearing the name of the accused who is an Indonesian National, the brown jacket worn by the accused, the motorcycle BHG 7567, a crash helmet with the brand name Magnum and a bunch of motorcycle keys. A search list of the items seized was made by him at the Klang Police Station and marked P12. He made markings on the package on the items seized. He made a small incision on the package which was marked P9 to ascertain and confirm that the contents of P9 was cannabis. The items seized were then handed by him to the Investigating Officer Inspector Salmi Nida as evidenced by the Borang Serah-Menyerah marked P15.
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> The evidence of SP3 that P9 was found on the body of the accused was corroborated by D/L/Kpl. Mat Yatim bin Ali (SP4).
>
> The incriminating package P9 was sent by the Investigating Officer SP5 to the Chemist Suhana binti Ismail (SP2) who after analysing them found that it was cannabis as defined under Section 2 of the Dangerous Drugs Act and confirmed the weight was 491 grams.

[3] The facts outlined above are indicative of the fact that the prosecution relies upon the finding of possession of the offending drug since the arresting officer (SP3) is the witness that gave

direct evidence of the circumstances under which the drug was taken from the appellant. The relevant portion of the evidence of SP3 needs mention:

> Pada jam 8.15 malam sudah berada di tempat kejadian.
>
> Saya ke tempat kejadian bersama 6 anggota polis - D/SM Abu Hassan, D/Kpl Onn, D/Kpl Rizal, L/Kpl Yatim, D/L/Kpl Hasdi dan D/L/Kpl Josney - kesemua dicam kecuali D/SM Abu Hassan dan D/Kpl Onn yang tidak hadir.
>
> Keadaan tempat kejadian diterangi oleh lampu jalan dan lampu gudang A.S. Logistics.
>
> Setiba di tempat kejadian kesemua telah membuat pemerhatian.
>
> Gudang terletak di tepi jalan raya.
>
> Keadaan lalulintas biasa sahaja.
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> Jam 8.30 malam saya melihat sebuah motosikal Yamaha 125Z No. BHG 7567 yang ditunggang oleh seorang lelaki berhenti di hadapan gudang A.S. Logistic dekat dengan tempat pemerhatian saya dan anggota polis yang lain. Saya dan keenam-enam anggota polis serbu saspek. Saspek cuba melarikan diri tetapi berjaya ditangkap oleh saya dan D/L/Kpl Yatim dan D/L/Kpl Rizal.
>
> Saya membuat pemeriksaan badan saspek dan disaksikan oleh semua anggota polis - saya menjumpai satu ketulan mampat dedaun kering yang dibaluti dengan kertas timah, plastik lutsinar dan selotape disyaki ganja yang berada di dalam seluar bahagian hadapan yang ditutup oleh jeket yang dipakai oleh saspek.
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> Pemeriksaan ke atas bahagian lain badan dan motorsikal - tiada barang salah dijumpai.

[4] A specific reference is made to the aforementioned evidence as this is the very aspect of the case that is being questioned on the grounds that there are contradictions. The contradictions alleged do not really stem from evidence of SP3 for as indicated by the learned trial judge the evidence of SP3 is supported by the evidence of SP4 who was present at the scene and time of arrest and in the presence of other police personnel.

[5] The finding of the offending drug is contradicted by the evidence of the appellant himself as the appellant's version is simply that the drug was found not on his person but allegedly retrieved from a factory compound, a premise in the adjoining

A proximity of the place where he was arrested. In short, the appellant's suggestion here is that the drug was "planted" in the area or that he was being framed. This court, as has been done by the courts below, has to evaluate the version of the finding of the drug as elicited in the unsworn statement from the dock
B (D20).

[6] It is necessary conjointly to consider the suggested discrepancies that also relate to the finding of the possession. The evidence being questioned pertains not to the nature of the drug
C found but the description of the package in which the drug was wrapped and the trousers worn by the appellant that became an exhibit. In relation to the package in which the drug was found it is evident from the relevant portion of the notes of proceedings that SP5 on 9 October 2006 at 10pm received '1 ketulan mampat
D dadah disyaki ganja yang dibaluti dengan kertas timah dan plastik lutsinar yang telah ditanda "A" '.

[7] The same witness SP5 testified:

> Jam 3.26 petang 12/10/06 ada menyerah eksibit-eksibit ke Ahli
E Kimia Suhana bt. Ismail (SP2) - 1 ketulan mampat bertanda A bertarikh 9/10/06 eksibit yang sama yang saya terima daripada C/Insp. Husni. Saya masukkan ketulan mampat dalam 1 sampul yang sama tandakan A - P7 dicam.
>
> Ya, P7 diserah oleh saya. Puan Suhana membuka P7 untuk
F memastikan kandungan di dalamnya adalah ketulan mampat.
>
> Pada 13/11/06 jam 3.10 saya terima sampul A dari Ahli Kimia Puan Suhana. Sebelum hantar ketulan mampat kepada Ahli Kimia saya simpannya dalam peti besi kabinet dalam pejabat saya - kunci
G dalam jagaan saya. Kabinet besi sentiasa dikunci.

[8] SP2 (the chemist) had confirmed receiving the sealed "sampul A" from SP5. In her evidence she also said:

> Dalam sampul surat "A" - saya mendapati 1 ketulan mampat
H bahan tumbuhan yang dibalut dengan plastik lutsinar yang diperkuat dengan selotape dan dibungkus dengan kertas timah dan dibalut dengan plastik lutsinar dan diperkuatkan dengan masking tape.
>
> ...
>
I Di bahagian tengah ada kesan torehan - ia telah ada semasa saya menerima.

[9] The above portions are cited to address the allegations that the packet containing the drug could have been tampered with, and the size of the package was such that the package could not have been tucked underneath the trousers worn by the appellant in the region of the belly/groin. The alleged tampering stems from the slightly differing description of the layers of packaging. Was there a double layer or triple layer of packaging? This issue was appropriately addressed before the COA where the COA ruled:

> On the issue of whether the drugs that was produced in court as P18 was the same one that was seized from the accused at the time of the arrest, learned DPP suggested that SP3 and SP5 were not able to spell out the third layer of the packages as SP3 merely did a triangular incision on the packages to see its contents and all the witnesses i.e. SP3 and SP5 had positively identified P9 as the drugs that was seized from the accused and later handed over to the chemist for analysis. The chemist SP2 in her evidence had informed the court that P9 was the exhibit that she received from SP5 and handed back to him after analysis.

[10] At this juncture reference to the decision in *Gunalan Ramachandran & Ors v. Public Prosecutor* [2004] 4 CLJ 551 is appropriate. In that case, the COA had to address issues similar to those before us pertaining to the alleged break in the chain of evidence or alleged tampering of evidence. The grounds of judgment included views which apply with equal force in the appeal before us and the relevant parts are as follows:

> [41] First, by way of a general observation, I am of the view that, in a drug trafficking case what is important is that it must be proved that it is the substance that was recovered that was sent to the chemist for analysis and it is that same substance that is found to be heroin or cannabis etc and it is in respect of that substance that an accused is charged with trafficking. So, the chain of evidence is more important for the period from the time of recovery until the completion of the analysis by the chemist. Even then it does not necessarily mean that if the exhibit is passed from one person to another, every one of them must be called to give evidence of the handing over from one person to another and if there is a break, even for one day, the case falls. There should be no confusion between what has to be proved and the method of proving it. What has to be proved is that it is the substance that was recovered that was analysed by the chemist and found to be heroin, cannabis etc, and it is for the trafficking of that same substance that the accused is charged with.

A [42] The proof of the chain of evidence is only a method of proving that fact. The fact that there is a 'a gap', does not necessarily mean that that fact is not proved. It depends on the facts and circumstances of each case. There may be a gap in the chain of evidence. But, if for example, during that
B 'gap' the exhibits are sealed, numbered with identification numbers, there is no evidence of tempering, there is nothing that would give rise to a doubt that that exhibit is the exhibit that was recovered in that case and that was analysed by the chemist, the fact that there is a gap, in the circumstances of the case, may not give rise to any doubt
C of that fact.

per Abdul Hamid Mohamad, JCA (as he then was).

[11] In the appeal before us the evidence of SP2, SP3 and SP5 combined disclose that the substance that was detected in the
D package was the very substance analysed by the chemist. The alleged difference in the layers of packaging did not amount to material contradictions for the purpose of identifying the drug.

[12] Another issue that is said to cast doubt in the prosecution's
E case is the trousers worn by the appellant at the time he was apprehended. No question was posed to SP3 or SP4 as to the type or colour of trousers he was wearing despite the fact that SP3 categorically stated:

F saya membuat pemeriksaan badan saspek dan disaksikan oleh semua anggota polis ...

It was only SP5 who gave the physical description as follows:

semasa OKT diserah kepada saya OKT memakai seluar warna
G biru dan jaket P13.

[13] During cross-examination of SP5 with respect to the pants worn on the day the appellant was arrested the responses given by SP5, *inter alia*, were:

H Tidak setuju P18 bukan seluar yang dipakai oleh OKT pada hari tangkapan ...

Tidak setuju pada hari tangkapan OKT langsung tidak memakai seluar jeans ...

I Tidak setuju pada hari tangkapan OKT pakai seluar cotton.

Tidak setuju seluar OKT pakai pada hari tangkapan slim dan fitting.

[14] It is evident that the defence overall has endeavoured to raise issues that are calculated to cast "pockets" of doubt in the prosecution's case with regard to the facts to be proven. The primary question here is whether the doubt is really caused by inherent contradictions in the case for the prosecution and which are in turn controverted by evidence furnished by the defence.

[15] In the present appeal the appellant had chosen to furnish an unsworn statement from the dock and no other witness was called for the defence. The decision in *Mohammed Salleh v. PP* [1968] 1 LNS 80 is useful. In the words of Wee Chong Jin CJ:

> In our judgment, the right of an accused at his trial on a criminal charge to make an unsworn statement from the dock is not a procedural right but a substantive right of an accused and accordingly does not depend on whether or not there is a specific provision for it in the Criminal Procedure Code. It seems to us beyond doubt that under our system of administration of justice, and it has been so throughout the entire history of our courts, a person accused of a criminal offence before an established court of justice has at his trial, as part of his defence, the right to make an unsworn statement from the dock if he wishes to do so. In our view this right can be taken away only by an express statutory provision to that effect.
>
> With regard to the question of prejudice arising out of the trial judge's comment on the probative value of the unsworn statement of the appellant, we are of the opinion that it is proper for a judge in summing up to remind the jury that a statement from the dock is not sworn evidence which can be the subject of cross-examination; that they can attach to it such weight as they think fit and that they should take it into consideration in deciding whether the prosecution have proved their case. In the present case the trial judge directed the jury as follows:
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> > Well, members of the Jury, that is the case for the prosecution. Now what is the accused's defence to this charge? You must also consider his evidence, or rather you must consider his defence. The accused, as you know, did not give evidence on oath. He made a statement from the dock and he could not be cross-examined by the prosecution, he could not be questioned by me, he could not be questioned by you. Members of the Jury, you will naturally not be inclined to give so much weight to what he said in the dock as you would if he gave evidence, because when a man gives evidence one can cross-examine on it and test it and generally have a much better

A opportunity of assessing it. Of course, you must not reject the statement of the accused, you must consider it and give it such weight as you think it is worth having regard to the other evidence that you have.

B **[16]** While that case pertains to a trial with a jury nevertheless the guidelines established is still applicable with respect to the probative value to be accorded to the unsworn statement that is a judge will naturally not be inclined to give so much weight to what he said in the dock as you would if he gave evidence as there was no opportunity of cross examining him in order to test C the veracity of his evidence as opposed to that of the prosecution.

[17] Two propositions have also been reiterated in *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337 that it is trite law that the court need not be convinced of the defence story to entitle the accused D to an acquittal. The next proposition is whether on the balance of probabilities the appellant has raised a defence to successfully rebut the statutory presumption of knowledge under s. 37(d) of the Dangerous Drugs Act 1952 where he is deemed to be in possession of the drug.

E **[18]** The defence overall is one of denial. He denied that the package was taken by the police from under his trousers and asserted instead that the drugs were found in the compound of a factory. His unsworn statement furnished a reason for being in the F area was to meet a friend by the name Adi Meru. He refuted wearing jeans and insisted that he was wearing instead a pair of cotton pants coloured dark blue.

[19] His version was that the pants were exchanged by force with some other "seluar" worn by an Indian detainee in a cell at G the Balai Polis Pandamaran. He did not deny that he was physically examined but refuted the fact that the package was found on his person. This detail needs emphasis for linked to this is the challenge to the search list P12. The challenge was that the search list did not describe how the package was found and yet H this flies in the face that he had attested his signature to P12.

[20] The COA had found that the trial judge has made a proper evaluation of the prosecution's material as against the defence. The appellant in our view has failed to furnish a plausible I explanation. His defence in effect amounts to non-cohesive contradictions which may be summed up as follows:

(a) If the police had found the drug in the compound of the factory premises why would the police additionally tamper with the drug while it was being kept. This is also connected to the allegation that that the size of the package was such it could not have been tucked in the trousers.

(b) The alleged failure to describe how the drug were found in P12 (the search list) is tantamount to requesting the Court to dictate how the police should proceed with its investigation. There is no break in the chain of evidence. SP4 and other police personnel were present when the drug were found.

(c) The inconsistencies alleged of the evidence of SP3 and SP5 in relation to the brown jacket are not irreconcilable. SP3 in the relevant portion of his testimony said:

> saya juga rampas 1 jaket warna coklat yang dipakai oleh OKT. .... .

SP4 identified the brown jacket and explained:

> Semasa OKT diserahkan kepada saya OKT memakai seluar biru dan jaket P13.

The jacket is described in P12 (the search). The above statements only disclose what was done by SP3 and what was seen by SP5. The court does not have to be filled in with the detail as to the exact moment that the jacket was physically taken from the appellant. The appellant himself does not deny that he was wearing a brown jacket.

(d) The appellant in his unsworn statement (D20) has not alluded to the presence of a guard who allegedly could have witnessed the manner of arrest. Yet the trial court was requested to draw an adverse inference against the prosecution for not calling a witness, that is, the guard. The alleged presence of the guard was raised during cross-examination of SP3 where the notes of evidence disclosed that in response to a question SP3, stated "ada jaga di pintu". It has been the prosecution's case that the appellant was apprehended outside the factory. The prosecution had several police witnesses. No further question was pursued to enable the court to draw proper inference what role the jaga had in the prosecution's case. The burden therefore shifts to the appellant to displace what the police witnesses did and saw.

A It is not the prosecution's case as to what they did not do. Hence the allegation of the presence and role of the jaga remains a statement from the Bar that does not contribute to the establishment of a fact.

B **[21]** We find the learned trial judge had considered all the elements that would amount to trafficking as charged. Apart from possession as deemed under s. 37(d) s. 2 of the DDA 1952 has been rightfully invoked where in the context of the case the prosecution could rely on the act of "keeping" and "carrying" to C constitute trafficking. The appellant had arrived at the place of arrest from somewhere.

[22] In the final analysis the COA has stated, *inter alia*:

> The accused's defence depended entirely on his credibility. Apart D from his word there was no evidence that would support the version of his story. Apparently the accused did not impress the trial judge as a truthful witness. On our part, we too had undertaken the opportunity of scrutinising the accused's defence statement. In our judgment the accused was not telling the truth and had invented his story to escape the consequences of his E criminal act.

[23] The summing up referred to above is found to be legally correct. On the material before us we find as the courts below, that on the balance of probabilities no reasonable doubt (the F operative factor) exists to justifying the setting aside of the conviction. Hence the appeal is dismissed. The conviction and sentence are therefore affirmed.

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